

An Introduction to
the United States'
Immigration
System and EOIR

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This outline is a companion to the New Immigration Judge Training provided by the Executive Office for Immigration Review.

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I. Sources of Immigration Law & Policy

A. Federal Legislative Branch

The United States Constitution expressly provides Congress with the power “[t]o establish a uniform rule of naturalization.” U.S. Const. art. I, § 8, cl. 4. Although this clause specifically references decisions about citizenship, the United States Supreme Court has also long held that “the government of the United States, through the action of the legislative department, can exclude aliens from its territory.” *The Chinese Exclusion Case*, 130 U.S. 581, 604 (1889).

The United States’ immigration laws have undergone repeated and drastic changes since the 1700s. For purposes of brevity, only a review of the most fundamental laws is included below; a more detailed list can be found in *Kurzban’s Immigration Law Sourcebook*. See Ira J. Kurzban, *Kurzban’s Immigration Law Sourcebook* 3–34 (15th ed. 2016).

1. McCarran Walter Act (Immigration and Nationality Act of 1952 (INA)), Pub. L. No. 82-414, 66 Stat. 163 (June 27, 1952)
 - a) *Established preferences within previously-established racial and national origin quotas for aliens with special skills (today’s first, second, and third employment-based preferences)*
 - b) *Established deportation procedures and relief from deportation*
 - c) *Established procedures and grounds for denaturalization*
 - d) *Established political grounds for exclusion under former INA § 212(a)(28)*
2. Immigration and Nationality Act of 1965, Pub. L. No. 89-236, 79 Stat. 911 (Oct. 3, 1965)
 - a) *Eliminated racial and national origin quotas, but established quotas for Western and Eastern hemispheres*
 - b) *Established labor certification requirement and conditional refugee status under former INA § 203(a)(7)*
 - c) *1978 amendments (Pub. L. No. 95-412, 92 Stat. 907) eliminated hemispheric quota system and established worldwide quota of 290,000 visas*
3. Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (Mar. 17, 1980)
 - a) *Created an ideologically neutral procedure for applying for asylum in the United States based on the United Nations Convention Relating to the Status of Refugees*
 - b) *Reduced worldwide quota to 270,000 and authorized the admission of an additional 50,000 refugees*
 - c) *Allowed 5,000 eligible asylees per year to adjust status to lawful permanent resident.*

- d) *1981 amendments (Pub. L. No. 97-116, 95 Stat. 1611) established waiver of excludability under INA § 212(h)*
- 4. Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, 100 Stat. 3359 (Nov. 6, 1986)
 - a) *Established sanctions against employers for hiring aliens not authorized to work in the United States*
 - b) *Established provisions prohibiting discrimination based on citizenship and nationality*
 - c) *Permitted natural fathers to petition for illegitimate children*
 - d) *Established a policy for expedited deportation of persons convicted of crimes*
 - e) *Established legalization programs to grant amnesty and residency to qualified aliens; created Cuban-Haitian Adjustment*
- 5. Immigration Act of 1990 (IMMACT90), Pub. L. No. 101-649, 104 Stat. 4978 (Nov. 29, 1990)
 - a) *Substantially altered preference system by establishing categories of employment-based immigration (including investors), placing an overall cap on immigration, redefining immediate relatives to include widows/widowers, and establishing annual diversity visa lottery program*
 - b) *Established temporary protected status programs enabling the Attorney General to designate nationals of certain countries suffering political or environmental upheaval to remain in the United States for increments of eighteen months*
 - c) *Established administrative naturalization*
 - d) *Expanded the definition of aggravated felony*
 - e) *Expanded the ability of immigration courts to enter in absentia orders; expanded immigration court authority to sanction attorneys for frivolous conduct; restricted rights to reopen proceedings; limited an alien's time to procure counsel*
 - f) *Eliminated a number of medical and ideological grounds for exclusion; broadened the right to exclude on foreign policy and terrorist grounds; changed the requirements for INA §§ 212(h) and (i) waivers; heightened criminal-related grounds*
 - g) *Amended the marriage fraud provisions to eliminate the need for good cause to obtain a waiver and the prohibition on adjustment for marriages during proceedings*
- 6. Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRIRA), Pub L. No. 104-208, 110 Stat. 3009 (Sept. 30, 1996)
 - a) *Established new grounds of inadmissibility, including: (1) the three- and ten-year bar to reentry for persons illegally in the*

- United States; (2) reentry without inspection following an order of removal or one year of unlawful presence; (3) presence in the United States without inspection or parole; and (4) false claim to United States citizenship*
- b) Established new grounds of deportation, including: (1) conviction for domestic violence, stalking, child abuse/neglect, or for violating a court protective order; and (2) false claim to United States citizenship*
 - c) Replaced exclusion and deportation proceedings with (1) summary removal for persons seeking entry (as immigrants or nonimmigrants) without proper documents or by making a material misrepresentation; (2) reinstatement of a prior order of removal/deportation/exclusion for persons who have illegally reentered the United States (3) "removal proceedings" for persons seeking entry (entered without inspection and all other inadmissible persons) and for persons in the United States—the distinction between exclusion and deportation proceedings was eliminated*
 - d) Replaced INA §§ 212(c) and 244 (suspension of deportation) with INA § 240A (cancellation of removal)*
 - e) Modified INA § 212(h) (waiver of inadmissibility) and (i) (inadmissible for fraud or willful misrepresentation of material fact) and INA § 240B (voluntary departure)*
 - f) Provided for mandatory detention of persons who are removable due to certain criminal convictions or activity*
 - g) Limited judicial review of multiple issues and provided that judicial appeals can only be taken in U.S. circuit courts where immigration proceedings were held after immigration proceedings are held before an immigration judge*
 - h) Redefined the terms "conviction," "term of imprisonment," and "sentence"*
 - i) Expanded the definition of aggravated felony*
7. Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (Nov. 25, 2002)
- a) Abolished the legacy Immigration and Naturalization Service (INS) and placed its functions within the new Department of Homeland Security (DHS) and the Department of Health and Human Services (HHS)*
 - b) In DHS, this authority was given to the Bureau of Citizenship and Immigration Services (now United States Citizenship and Immigration Services (CIS)) and the Bureau of Border Security (now comprised of Immigrations and Customs Enforcement (ICE) and Customs and Border Protection (CBP))*

- c) *In HHS, the Office of Refugee Resettlement was given jurisdiction over unaccompanied alien children*
 - d) *DHS Secretary given exclusive authority to issue regulations and administer/enforce the INA, but Secretary of State retained authority to deny visas and other authorities as outlined in the INA*
- 8. Homeland Security Act of 2002 Amendments Act, Pub. L. No. 108-7, 117 Stat. 11 (Feb. 20, 2003)
 - a) *Provided that the DHS Secretary “shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions” of the INA “relating to the functions of consular officers of the United States in connection with the granting or refusal of visas, and shall have the authority to refuse visas in accordance with law”*
- 9. REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231 (May 11, 2005)
 - a) *Established new guidelines for credibility and corroboration in removal proceedings*
 - b) *Limited judicial and administrative review of the need for corroborative evidence*
 - c) *Required asylum and withholding of removal applicants to demonstrate that race, religion, nationality, membership in a particular social group, or political opinion “was or will be at least one central reason” for persecution under INA § 208(b)(1)(B)(i)*
 - d) *Established the applicant’s burden to establish (1) eligibility for relief and (2) that she merits a favorable exercise of discretion*

B. Federal Executive Branch

As in other areas of the law, the function of the Executive Branch in the field of immigration is to enforce the legislation passed by Congress. Generally, Congress delineates basic immigration policy, and executive agencies have the ability to create procedures for implementing, administering, and enforcing those laws. An executive agency must stay within its grant of authority, as defined by statute.

1. Federal Regulations

Title 8 of the Code of Federal Regulations is entitled “Aliens and Nationality” and contains the implementing regulations for the INA. It is divided into two chapters—Chapter I pertains to the DHS (8 C.F.R. §§ 100–499), while Chapter V pertains to the Department of Justice’s (DOJ’s) Executive Office for Immigration Review (EOIR) (8 C.F.R. §§ 1000–1399).

2. Federal Agencies

As noted above, until 2002, the legacy Immigration and Naturalization Service (INS) was charged with administering and enforcing the United States' immigration laws. However, the Homeland Security Act of 2002 distributed the administration and enforcement responsibilities between multiple agencies, including the Departments of Homeland Security, Justice, and Health and Human Services. In addition, the Department of State and the Department of Labor play a role in administering and enforcing the Nation's immigration laws.

a) Department of Homeland Security (DHS)

Although the DHS contains many components, the most vital for immigration purposes are listed below.

(1) United States Customs and Border Patrol (CBP)

CBP exists “[t]o safeguard America’s borders thereby protecting the public from dangerous people and materials while enhancing the Nation’s global economic competitiveness by enabling legitimate trade and travel.” U.S. Customs and Border Protection: About CBP, <https://www.cbp.gov/about> (last visited May 2, 2018). In general, CBP guards against unlawful entries to the United States. It conducts immigration and customs inspections at ports of entry (POEs) (e.g., airports, land ports, sea ports), determines whether noncitizens are eligible to enter at a POE, apprehends unlawful entrants and transfers them to ICE, and addresses other front-line enforcement challenges (e.g., unaccompanied alien children).

(2) United States Immigration and Customs Enforcement (ICE)

ICE “enforces federal laws governing border control, customs, trade and immigration to promote homeland security and public safety.” U.S. Immigrations and Customs Enforcement: Who We Are, <https://www.ice.gov/about> (last visited May 2, 2018). In general, ICE enforces immigration law in the interior. It identifies, investigates, and apprehends unlawful immigrants; manages detention; initiates removal proceedings; represents the United States Government in immigration court; and removes and deports aliens

(3) United States Citizenship and Immigration Services (CIS)

CIS “administers the nation’s lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values.” U.S. Citizenship and Immigration Services: About

Us, <https://www.uscis.gov/aboutus> (last visited May 2, 2018). CIS adjudicates applications for immigration benefits, including family and employment-based petitions and applications for adjustment of status, affirmative asylum, and humanitarian based relief. At field offices and regional Service Centers around the country, it processes immigration benefits; administers petitions filed by aliens, their family members, and their employers; and hears affirmative asylum cases and asylum cases filed by unaccompanied alien children.

b) Department of State (DOS)

In the immigration context, the DOS reviews and adjudicates nonimmigrant and immigrant visa applications abroad; processes applications at the National Visa Center and schedules consular interviews; and provides aid for refugees, victims of conflict, and stateless persons around the world. It publishes the Foreign Affairs Manual (FAM), the annual Report to Congress on International Religious Freedom, and the annual Country Reports on Human Rights Practices. It also provides assistance to United States citizens overseas and issues United States passports.

c) Department of Labor (DOL)

In the immigration context, the DOL adjudicates labor certifications for employment-based immigration petitions, certifies T-visas based on human trafficking, and certifies U-visas based on workplace crimes. Its labor certification process protects American workers from being displaced by foreign workers abroad and ensures that domestic wages are not depressed when employers use unauthorized noncitizen workers.

d) Department of Health and Human Services (HHS)

In the immigration context, HHS provides benefits and resources to refugees, contracts with non-governmental organizations to help refugees resettle, raises awareness regarding human trafficking, assists survivors of trafficking through the use of refugee benefits, and shelters and provides services to unaccompanied alien children.

e) Department of Justice (DOJ)

The DOJ's mission is to "enforce the law and defend the interest of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans." The United States Department of Justice: About DOJ, <https://www.justice.gov/about> (last visited May 2, 2018). The DOJ is led by the Attorney General and Deputy Attorney General.

Many of the DOJ's components assist in the administration and enforcement of the nation's immigration laws, including the following:

(1) Executive Office for Immigration Review (EOIR)

Under authority delegated by the Attorney General, EOIR conducts immigration court proceedings, appellate reviews, and administrative hearings. It is tasked with adjudicating immigration cases in a careful and timely manner, including cases involving detained aliens, criminal aliens, and aliens seeking asylum as a form of relief for removal, while ensuring the standards of due process and fair treatment for all parties involved. Its mission is "to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws." Executive Office for Immigration Review: About the Office, <https://www.justice.gov/eoir/about-office> (last visited July 6, 2018).

(2) U.S. Attorney's Offices

Prosecutes individuals and businesses who commit crimes, including immigration crimes.

(3) Criminal Division

Prosecutes individuals and businesses who commit crimes, including immigration crimes.

(4) Civil Division

The Office of Immigration Litigation (OIL) litigates immigration cases before federal district and appellate courts, including direct appeals of cases arising from immigration courts, habeas corpus cases, and other civil immigration matters.

C. Federal Judicial Branch

1. United States Supreme Court

As with most other types of cases, the United States Supreme Court grants certiorari and hears appeals on immigration issues rendered by U.S. circuit courts on a case-by-case basis.

2. United States Courts of Appeals (a.k.a. "circuit courts")

The United States Courts of Appeals hear appeals of most decisions rendered by the Board of Immigration Appeals. Appeal to a U.S. circuit court of such decisions is an appeal as of right.

D. State Laws

States and localities also pass and enforce laws related to immigration, or immigrants. (E.g., regulating who may vote in local or state elections.)

II. Organization and Structure of EOIR

A. Office of the Director

EOIR is headed by a Director who is responsible for the supervision of the Deputy Director, the Chairman of the Board of Immigration Appeals, the Chief Immigration Judge, the Chief Administrative Hearing Officer, and all agency personnel in the execution of their duties in accordance with 8 CFR Part 3.

The Director represents the position and policies of EOIR to the Attorney General, Deputy Attorney General, Members of Congress, and other governmental bodies, the news media, the bar, and private groups interested in immigration matters.

On behalf of the Director, the Deputy Director oversees the Board of Immigration Appeals, Office of the Chief Immigration Judge, and Office of the Chief Administrative Hearing Officer, as well as the EOIR's Office of the General Counsel, Office of Equal Employment Opportunity, Office of Legal Access Programs (which includes EOIR's Legal Orientation and Pro Bono Program), Office of Information Technology, Office of Policy, and the Office of Administration.

Source: The United States Department of Justice, EOIR: Office of the Director, <https://www.justice.gov/eoir/office-of-the-director> (last visited May 15, 2018).

B. Board of Immigration Appeals (BIA)

The BIA is the highest administrative body for interpreting and applying immigration laws. It is authorized up to 21 Board Members, including the Chairman and Vice Chairman, who share responsibility for BIA management. The BIA is located at EOIR headquarters in Falls Church, Virginia. Generally, the BIA does not conduct courtroom proceedings—it decides appeals by conducting a "paper review" of cases. On rare occasions, however, the BIA hears oral arguments of appealed cases, predominately at headquarters.

The BIA has been given nationwide jurisdiction to hear appeals from certain decisions rendered by immigration judges and by district directors of the DHS in a wide variety of proceedings in which the Government of the United States is one party and the other party is an alien, a citizen, or a business firm.

BIA decisions are binding on all DHS officers and immigration judges unless modified or overruled by the Attorney General or a federal court. Most BIA decisions are subject to judicial review in the federal courts. The majority of appeals reaching the BIA involve orders of removal and applications for relief

from removal. Other cases before the BIA include the exclusion of aliens applying for admission to the United States, petitions to classify the status of alien relatives for the issuance of preference immigrant visas, fines imposed upon carriers for the violation of immigration laws, and motions for reopening and reconsideration of decisions previously rendered.

The BIA is directed to exercise its independent judgment in hearing appeals for the Attorney General. BIA decisions designated for publication are printed in bound volumes entitled *Administrative Decisions Under Immigration and Nationality Laws of the United States*.

Source: The United States Department of Justice, EOIR: Board of Immigration Appeals, <https://www.justice.gov/eoir/board-of-immigration-appeals> (last visited May 15, 2018).

C. Office of the Chief Immigration Judge (OCIJ)

OCIJ is led by the Chief Immigration Judge, who establishes operating policies and oversees policy implementation for the immigration courts. OCIJ provides overall program direction and establishes priorities for immigration judges located in immigration courts throughout the Nation. The Chief Immigration Judge is supported by the Principal Deputy Chief Immigration Judge and two Deputy Chief Immigration Judges. Additionally, Assistant Chief Immigration Judges (ACIJJs) generally are responsible for oversight of multiple immigration courts. Court Administrators (CAs) oversee the day-to-day administrative functioning of the immigration courts.

Source: The United States Department of Justice, EOIR: Office of the Chief Immigration Judge, <https://www.justice.gov/eoir/office-of-the-chief-immigration-judge> (last visited May 15, 2018).

D. Office of the Chief Administrative Hearing Officer (OCAHO)

The OCAHO is headed by a Chief Administrative Hearing Officer who is responsible for the general supervision and management of administrative law judges who preside at hearings which are mandated by provisions of law enacted in the (IRCA) and the IMMACT90.

Administrative law judges hear cases and adjudicate issues arising under the provisions of the INA relating to: (1) knowingly hiring, recruiting, or referring for a fee unauthorized aliens, or the continued employment of unauthorized aliens, failure to comply with employment eligibility verification requirements, and requiring indemnity bonds from employees in violation of section INA § 274A (employer sanctions); (2) immigration-related unfair employment practices in violation of section INA § 274B; and (3) immigration-related document fraud in violation of INA § 274C. Complaints are brought by the DHS, the Immigrant and Employee Rights Section in the Civil Rights Division of the DOJ (formerly the Office of Special Counsel for Immigration-

Related Unfair Employment Practices), or private individuals or entities as prescribed by statute.

Hearings are conducted under applicable laws and regulations, as well as the general requirements of the Administrative Procedure Act. Employer sanctions and document fraud cases are subject to administrative review by the Chief Administrative Hearing Officer and/or the Attorney General. All final agency decisions are subject to review in the U.S. circuit courts.

Source: The United States Department of Justice, EOIR: Office of the Chief Administrative Hearing Officer, <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer> (last visited May 15, 2018).

E. Office of the General Counsel (OGC)

The OGC provides legal advice on a wide variety of matters involving EOIR and its employees in the performance of their official duties. The OGC staff serves as agency counsel in federal court litigation, assists the Office of Policy in developing agency regulations, responds to all Freedom of Information Act (FOIA) and Privacy Act requests and serves as the designated point of contact regarding standards of conduct and other ethics guidance for all EOIR employees. The Employee/Labor Relations Unit of OGC advises agency managers on personnel issues, defends Equal Employment Opportunity (EEO) actions filed against the agency, monitors investigations conducted by the DOJ's Office of Professional Responsibility, and defends against unfair labor practices charges. OGC also administers the Fraud and Abuse Prevention Program and the Attorney Discipline Program, and supervises the Certification Unit, which provides certified copies of Records of Proceedings (ROPs) to circuit courts when a case is appealed. OGC also serves as the principal point of contact for other DOJ offices and government agencies on all agency-related legal matters.

Source: The United States Department of Justice, EOIR: Office of the General Counsel, <https://www.justice.gov/eoir/office-of-the-general-counsel> (last visited May 15, 2018).

F. Office of Administration (ADMIN)

The Office of Administration provides administrative and managerial support in several areas concerning financial management or special emphasis and compliance programs. Specifically, the Office of Administration supports the following areas: appropriations, budget and financial management, contracts and procurement, human resources, security, space and facilities management, and logistics.

Source: The United States Department of Justice, EOIR: Office of Administration, <https://www.justice.gov/eoir/office-administration> (last visited May 15, 2018).

G. Office of Information Technology (OIT)

The OIT oversees EOIR's information technology (IT) infrastructure, working to supply the IT solutions and services required to meet the agency's technology needs. OIT is comprised of four directorates tailored to efficiently and effectively execute IT strategy, hardware and software optimization, and customized application development using defined processes: Chief Architect; Operations Services; Governance, Planning, and Support; and Software Development.

Source: The United States Department of Justice, EOIR: Office of Information Technology, <https://www.justice.gov/eoir/office-information-technology> (last visited May 15, 2018).

H. Office of Policy (OP)

The Office of Policy is responsible for all agency policy and regulatory review and development, internal and external communications, official data collection and reporting, strategic planning, and legal education, research, and certifications. The Office strives to maintain open communication among components through the efforts of the staff of the following divisions: Communications and Legislative Affairs Division (CLAD); Immigration Law Division (ILD); Legal Education and Research Services Division (LERS); and the Planning, Statistics, and Analysis Division (PASD).

Source: The United States Department of Justice, EOIR: Office of Policy, <https://www.justice.gov/eoir/office-of-policy> (last visited July 5, 2018).